

Message Text

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61

ACTION ARA-10

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FM AMEMBASSY LIMA

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STADIS//////////

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TAGS: BEXP, EFIN, PE

SUBJ: PROBLEMS WITH EXPORT-IMPORT BANK LOAN CONTRACTS

REF: LIMA 0279, LIMA 0805

1. COFIDE LAWYER INFORMED US THAT THEY RECEIVED A TELEX ON JUNE 11 FROM EXIMBANK REQUESTING EIGHT CHANGES IN THE DRAFT CONTRACT FOR EXIMBANK CREDIT NO 5590 WHICH IS FOR THE PURCHASE OF AIRPORT RAMP SERVICE EQUIPMENT FOR CORPAC. COFIDE HAS SENT A TELEX TO EXIMBANK STATING THAT THEY ACCEPT SIX OF THE CHANGES BUT CANNOT ACCEPT TWO OTHERS.

2. JAIME ARAOZ, COFIDE'S INTERNATIONAL AFFAIRS MANAGER, VISITED EXIMBANK IN WASHINGTON SEVERAL MONTHS AGO TO DISCUSS THIS CONTRACT AND OTHER MATTERS. ACCORDING TO COFIDE, AS THE RESULT OF HIS MEETINGS IN WASHINGTON AND SUBSEQUENT TELEPHONE CONVERSATIONS AND CABLE EXCHANGES WITH EXIMBANK, A NEW DRAFT DATED MAY 12 WAS AGREED UPON BY BOTH SIDES. COFIDE CLAIMS TO BE VERY SURPRISED BY THIS NEW TELEX WITH THE EIGHT EXIMBANK CHANGES.

3. ONE OF THE TWO CHANGES SUGGESTED BY EXIMBANK AND NOT ACCEPTABLE TO COFIDE DEALS WITH THE CONDITIONS UNDER WHICH THE LOAN WOULD BE CONSIDERED IN DEFAULT (PAGE 20 OF THE CONTRACT). THE ORIGINAL SEPTEMBER 13, 1974 DRAFT STATED THAT THE LOAN WOULD BE IN DEFAULT IF "THE LIMITED OFFICIAL USE

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ITEMS ARE USED FOR OFFENSIVE OR DEFENSIVE MILITARY PUR-

POSES." THE MAY 12 DRAFT REPLACED THIS PHRASE WITH THE FOLLOWING: "THE ITEMS ARE USED FOR A PURPOSE WHICH DIFFERS FROM THAT FOR WHICH THEY WERE PURCHASED." THE JUNE 11 EXIMBANK CABLE SUGGESTS REPLACING THE PHRASE IN THE MAY 12 DRAFT BY THE ORIGINAL PHRASE. COFIDE CONTENTS THAT ACCORDING TO PERUVIAN LAW, IN THE CASE OF INTERNATIONAL CONFLICT, SUCH EQUIPMENT MAY BE USED FOR MILITARY PURPOSES. (NOTE THAT IN ALL OPERATING PERMITS ISSUED BY THE GOP TO FOREIGN AIRLINES THERE IS A CLAUSE RESERVING FOR THE GOP THE RIGHT TO USE ANY OR ALL EQUIPMENT OF THAT AIRLINE IN THE CASE OF DOMESTIC DISTURBANCES OR INTERNATIONAL CONFLICTS.) THE CLAUSE IN THE ORIGINAL SEPTEMBER 13 DRAFT WAS ONE OF THE CLAUSES TO WHICH THE GOP OBJECTED MOST VIGOROUSLY. THE REVISED WORDING WAS A CAREFULLY WORKED OUT COMPROMISE DESIGNED TO COVER THE LEGAL REQUIREMENTS OF BOTH PARTIES. THE EMBASSY RECOMMENDS A RETURN TO THIS WORDING.

4. THE SECOND CHANGE SUGGESTED BY EXIMBANK AND NOT ACCEPTABLE TO COFIDE DEALS WITH THE LAWS WHICH WILL GOVERN THE CONTRACT. ACCORDING TO BOTH THE SEPTEMBER 13 AND THE MAY 12 DRAFTS, THE AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE DISTRICT OF COLUMBIA. ACCORDING TO COFIDE, SUBSEQUENT TO THE MAY 12 DRAFT, EXIMBANK AND COFIDE AGREED TO INSERT PRIOR TO THE STATEMENT ABOUT THE GOVERNING LAW (PAGE 23 OF THE CONTRACT), "IN ACCORDANCE WITH DECREE LAW NO 19988 OF THE REPUBLIC OF PERU,". THE RECENT EXIMBANK CABLE REQUESTS THAT THIS NEW ADDITION NOW BE DELETED. THIS IS AN EXTREMELY SENSITIVE POINT, AS IT WAS THIS TYPE OF CLAUSE WHICH STIMULATED AN EXTREMELY STRONG ATTACK ON THE GOP IN NOVEMBER BY A GROUP OF PERUVIAN LAWYERS.

5. COMMENT: THE EMBASSY IS VERY CONCERNED ABOUT THIS MOST RECENT EXIMBANK OBJECTION TO THE MAY 12 DRAFT CONTRACT. WE HAVE REPEATEDLY TOLD THE GOP AT ALL LEVELS THAT EXIMBANK IS INTERESTED IN MAKING LOANS AND LOAN GUARANTEES TO PERUVIAN ENTITIES (ONA CASE-BY-CASE BASIS). WE HAVE ALSO REJECTED SEVERAL TIMES THE GOP CONTENTION THAT EXIMBANK IS DELAYING THE FINAL APPROVAL OF THESE CONTRACTS FOR POLITICAL REASONS. WE THOUGHT THAT OUR ARGUMENTS, PLUS EXIMBANK'S LIMITED OFFICIAL USE

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DEMONSTRATED WILLINGNESS TO DISCUSS AND CHANGE THE DRAFT CONTRACT IN THIS AND ANOTHER CASE PERSUADED THEM THAT THEIR CONCLUSIONS WERE INACCURATE. MOREOVER, THE SAME PROBLEM IS LIKELY TO OCCUR IN THE CASE OF OTHER EXIMBANK LOANS TO COFIDE OR OTHER GOP ENTITIES. SOME COMPROMISE ACCEPTABLE TO BOTH PARTIES WILL OBVIOUSLY HAVE TO BE WORKED OUT IF A PRODUCTIVE RELATIONSHIP IS TO DEVELOP BETWEEN THE EXIMBANK AND

PERU.

6. ACTION REQUESTED: EMBASSY RECOMMENDS THAT THIS
MATTER BE DISCUSSED WITH EXIMBANK AT AN APPROPRIATE
LEVEL IN ORDER TO RESOLVE THE PROBLEM.
DEAN

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